UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

REMINGTON LODGING & HOSPITALITY, LLC

and **Case No. 29-CA-093850**

REMINGTON LODGING & HOSPITALITY, LLC AND HOSPITALITY STAFFING SOLUTIONS, LLC, joint employers

and

LOCAL 947, UNITED SERVICE WORKERS UNION, INTERNATIONAL UNION OF JOURNEYMEN AND ALLIED TRADES

Brent Childerhose, Esq., Ashok Bokde, Esq. and Lara Haddad, Esq., for the General Counsel
Karl M. Terrell, Esq., for Remington
Jonathan J. Spitz, Esq., for HSS

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in Brooklyn, New York on various days from March 6 to 20, 2013. The charge was filed on November 27, 2012 and the Complaint was issued on January 15, 2013. [1] In substance, the Complaint alleges as follows:

1. That in or about mid-June 2012, Remington, by Andrew Arpino, at the time the housekeeping manager, interrogated employees about their union activities.

2. That in August and September 2012, Remington by Percida Rosero, a housekeeping supervisor, (a) threatened employees with discharge, (b) threatened employees regarding their immigration status; (c) interrogated employees about their union activity; and (d) told employees that their work was being subcontracted to avoid the Union.

[1] At the hearing, Hospitality Staffing Solutions, (HSS) offered to fully settle the case to the extent that the Complaint alleged that it engaged in or was responsible for unlawful conduct. The General Counsels asserted that they were not alleging that HSS would be liable for any backpay resulting from a finding of illegal discrimination and that there were no prior instances where HSS had been found to have violated the Act. Accordingly, as HSS agreed to fully remedy all of the allegations that were attributable to it, and as the Charging Party also agreed to enter into the settlement, I approved the Settlement on March 19, 2013 over the objection of the General Counsel.

3. That in August and September 2012, the Respondent by Osiris Arango, the Human Resources Director, (a) interrogated employees about their union activities; (b) directed employees to report union activity; (c) told employees that work was being subcontracted to avoid the Union; (d) directed employees not to sign union authorization cards; and (e) threatened employees with discharge.

4. That from August 21, 2012, to October 19, 2012, Remington for discriminatory reasons subcontracted the housekeeping work at the Hyatt Hotel to HHS.

5. That on or about October 19, 2012, Remington, for discriminatory reasons discharged about 37 housekeeping employees, some of whose names are unknown and including the following named employee:

Maria Armay	Vilma Barzallo
Andre Bonard	Estela Cabrera
Maria Garcia	Berty Gandados
Noris Gutierrez	Francis Lopez
Efer Monge	Ninfa Palacios
Roxana Pereria	Ana Salgado

6. That alternatively, from about September 19, 2012 to October 19, 2012, Remington for discriminatory reasons refused to hire or consider for hire, the housekeeping employees who were directly employed by HHS and are described in the preceding paragraph.

7. That on or about January 2, 2013, the Respondent for discriminatory reasons discharged Margaret Loiacono.

8. That in January 2013, the Respondent distributed literature to employees that (a) threatened employees with more onerous working conditions; (b) threatened employees with unspecified reprisals; and (c) threatened to withhold a benefit.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

Findings and Conclusions

I. Jurisdiction

The Respondents admit and I find that they are employers engaged in interstate commerce within the meaning of Section 2(2), (6) and (7) of the Act. It also is admitted and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

(a) Background and the nature of the operations

The facility involved in this case is a hotel located in Hauppauge, New York. Although branded as a Hyatt hotel, it is not owned by that entity, which instead leases its brand to a group of independent owners. For many years, the hotel utilized the Hyatt organization to provide the actual management services for the hotel. Hyatt in turn, subcontracted out the housekeeping department, consisting of about 40 employees, to a company called Hospitality Staffing

Services, herein called HSS. HSS is based in Atlanta Georgia and provides staffing services specifically for hotels throughout the country. At the time that it was performing the housekeeping functions for this particular hotel, HSS had an office in Long Island and this hotel was its only customer on the Island.

In 2011, the owners of the hotel decided that they no longer wished to use Hyatt to run the hotel and contracted this function to Remington Lodging & Hospitality LLC. This company has its main headquarters in Dallas, Texas and currently manages 70 hotels in the United States.

The President of Remington is Mark Sharkey. Under him is Evan Studer who is the Executive Vice President of Operations. In turn, there are about 15 divisional managers who report to Studer, including Sileshi Mengiste who is responsible for a number of hotels including the Hyatt in Hauppauge. When Remington, in December 2011, took over the running of the hotel, the local General Manager was Michael Lawrence. He left in 2012 and after a short period when there was an interim general manager; Jeff Rostek took over this position in or about the middle to late July 2012. At one point, Mark Arpino was the head of housekeeping, but he was moved to be the front desk manager and his position was taken by Blanca Dunleavy on August 1, 2012. In the housekeeping department there were two supervisors who reported to Dunleavy and these were Percido Rosero and Yohenna Guerro. The Respondent concedes that these two individuals are supervisors as defined in Section 2(11) of the Act. At the corporate level, Remington employs a Director of Human Resources who is Sharon Glees. At the local level, the Director of Human resources for this particular hotel is Osiris Arango.

In December 2011, when Remington took over the management of the hotel, it decided that it would directly employ the hotel's employees including the employees in the housekeeping department. Accordingly, the arrangement with HSS was cancelled and the housekeeping employees, including their supervisors, were hired by Remington. This decision was in fact consistent with Remington's general preference which is to directly employ hotel staff so that it can have more control over the hotel's operations. [2]

So, from the time that Remington took over the management of the hotel and until August 20, 2012, it directly employed the housekeeping staff and supervisors who worked under the direction first of Mark Arpino and then of Blanca Dunleavy.

Before moving on, I note that hotels are generally rated in various categories based on guest surveys that are conducted either by the brand, (e.g. Hyatt) or by an independent entity. In this respect, customers are sent, usually by e-mail, surveys in which they can rate various aspects of the hotel, such as service, cleanliness, etc. Although not every guest will respond, sufficient guests do respond and a rolling tally is sent to each hotel and their respective managements. For our purposes, the main category we should be concerned with is the survey results for guest rooms. According to the Respondent's witnesses, a reason that the hotel's owners decided to contract with Remington was because the survey scores under Hyatt and

[2] Although there have been occasions in the past when Remington has subcontracted various functions to other companies, there are far fewer instances when Remington has contracted out housekeeping functions. There are some exceptions, but by and large, except for one past instance involving a hotel in Key West, Remington never contracts out *all* of the housekeeping work. Either it will directly employ the employees or subcontract for only a supplemental staff. In the case of the Key West Hotel, the housekeeping work was contracted out for only a limited period of time and was later brought back in-house.

HSS were unacceptable. They also testified that after Remington took over, the scores continued to place this hotel at or near the bottom of all full service Hyatt hotels. It is Remington's contention that when the scores for the hotel did not improve, it decided that the remedy should be to outsource the housekeeping work to another company. And to this end, the record indicates that a decision to explore the possibility of contracting out this work was initiated sometime in mid to late June and no later than June 28, 2012.

(b) Commencement of union organizing and the decision to subcontract housekeeping operations.

Jose Vega, a union agent, visited the hotel in April and while there started to communicate with some of the housekeeping staff about unionization. Thereafter, he made a habit of visiting the hotel and during the course of his visits from April, he met with an employee named Veronica Flores who became his liaison with the other employees. As a result, a union meeting was planned for sometime June 10, 2012. However, that meeting was called off because, Vega was told by Flores that management had learned of the union activity. [3]

Ninfa Palacios, a housekeeping employee testified that sometime in May 2012, she was approached by supervisor Percida Rosero who asked her if she was asked to participate in a union meeting. Palacios testified that she told Rosero that she new nothing and had not been invited to any meeting. She states that Rosero said that there were some rumors that a meeting was going on.

Veronica Flores testified that in June 2012, Andrew Arpino, then the director of housekeeping, called her into his office and asked if she knew anything about a union. She testified that she said that she didn't know anything and that he said that if she heard anything, she should let him know. Flores states that when she asked him what was going on, Arpino showed her a union business card and said that another employee named Amaya, had given it to him. [4] In relation to this meeting, Flores was not all that certain as to when it occurred but from the context of her testimony it most likely occurred shortly before June 10. She also testified that no one else was present. According to Flores, it was after this meeting that she contacted Vega and asked that the meeting be called off.

Flores testified that in late June, she had another conversation with Arpino and that while in his office, he showed her a picture on a computer screen and asked if the person was Jose Vega. She testified that although it looked like Vega, it was not him and that she told Arpino that it was not him.

Flores testified that in early July, she was approached by Rosero who said that the Union was trying to get into the hotel that this was impossible because it would take money away from everyone and that a union would not work with someone who is not documented.

Finally, Flores testified that in early August, she overheard Rosero talking to another employee and that Rosero said that employees would be dismissed if they talked to the union and that the Union did not work with people who were undocumented,

[3] I am not relying either on Vega's testimony or the testimony of employees that the meeting was canceled because employees believed management knew of union activities to prove the truth of that assertion.

[4] Vega testified that on his visits to the hotel, he would walk around the hallways and when he spoke to an employee would hand out his business card.

The Respondent did not call Arpino or Rosero as witnesses and they therefore did not contradict the testimony of Flores or Palacios. Accordingly, I shall credit their testimony which shows that by no later than June 10, 2012, management was aware that a union agent was soliciting employees inside the hotel.

In my opinion, the above noted conversations constituted illegal interrogations under the rationale of *Rossmore House*, 269 NLRB 1176 (1984). I also conclude that the statements overheard by Flores that Rosero made in August, constituted an impermissible threat of reprisal in violation of Section 8(a)(1) of the Act.

Although the record is not clear as to exactly when the Respondent commenced the process resulting in the subcontracting of the housekeeping work, the first written communication regarding this subject is dated June 28, 2012. On this date, Sileshi Mengiste, sent two similar e-mail reports to Mark Sharkey, (the CEO), Evan Studer, (the Executive Vice President of Operations) and Sharon Glees, (the head of Human Resources). The report sent at 8:39 p.m., which slightly modifies a report sent at 3:51 p.m., states:

> Dear Mark
> As you aware, the hotel made the decision sometime ago to bring the outsourced housekeeping department in house in order to improve guest satisfaction and operations scores. This approach has not delivered the expected results as our scores are still a major problem for this hotel.
> In order to improve the hotel's financial position and flow through, as well as to improve operational efficiencies, I recommend that we again outsource the housekeeping department to Hospitality Staff Solutions (HSS), a reputable contract labor company that the hotel has worked with on a limited basis since 2008.
> Additional benefits to outsourcing the department follow:
> Financial – Attached is an analysis computed with the current contract rate of $12.60 per hour. This represents a "worst case" scenario and I will be working on a reduced rate considering the amount of business we will be bringing to HSS.
> Workers Compensation – HSS will carry all liability insurance, which will reduce a significant amount of financial burden and responsibility from the hotel operations.
> Healthcare – Considering the Supreme Court's ruling today on the Affordable Healthcare Act, the hotel's exposure to increase healthcare expenditures in the future is uncertain at best and more likely represents a significant increase financial burden on the hotel operations.
> Hiring and Recruiting – Currently, the hotel is struggling to fill open positions in the housekeeping department. On average, it will take 30 to 45 days to hire a house person or a room attendant. HSS has vast resource as and expertise to meet our staffing needs.
> Over time – Currently the hotel incurs overtime if business demand increases on short notice, staff calls out sick or our forecasting proves to be inaccurate. HSS had the resources to readily provide the necessary staffing levels on short notice in order to meet business demands.

On the same day at 9:02 in the evening, CEO Mark Sharkey responded to the e-mails and stated:

> Sileshi, I have reviewed your email and agree that it is time to address this problem. We cannot allow service to be this low or to continue to suffer from staffing problems. This has gone on too long and we must make a change immediately. Reach out to HSS and make the necessary changes tomorrow. Do what you can to get HSS to lower their hourly rate or to tie the rate to a level of service, etc. Ps get this done before the weekend. Thanks.

According to Rick Holliday, his company was first contacted by Remington on June 28. In this regard, Holliday testified that he checked his records and confirmed that this was when Sileshi Mengiste contacted HSS' business development team.

Holliday testified that in late June or early July, he participated in a conference call with Mengiste, Studer and Glees who said that they needed to move in this redirection because of low survey scores and because they were having some turnover issues. He states that they told him that they were having a problem getting enough housekeeping staff. Holliday also testified that they told him that they wanted this to happen right away: "the next day."

On June 30, 2012 Rick Holliday sent an e-mail to Remington which stated:

> I apologize for not getting back to you sooner. We are working on determining the time frame to be able to re-open the branch office back up.
> Sharon, are there any issues with unions, ICE or wage and hour at the property now?

On July 1, 2012, Evan Studer of Remington, sent a message to Holliday which stated inter alia:

> To my knowledge there are no issues with the items you noted. I'm sure you're aware that union organizing on the island has been in play for many years and has also heated up in the past year, something to be aware of. Our objective is to get this department outsourced for all the reasons we reviewed with you, such as better recruiting pool, keeping our cost at or near to its current level and the primary reason to quickly grow our guest satisfaction rating in the Hyatt system. Our research has led us to believe all these items can be best served in this market through a professional nationwide cleaning organization.

From July 2 to July 9, Studer also communicated with David Tucker from a company called Jani-King about a possible contract. On July 2, Tucker sent an e-mail to Studer attaching a proposed contract. At 5:59 p.m. Studer acknowledgement receipt of the contract and in a response, with copies to Sharon Glees and Sileshi Mengiste, he stated; "We will review tonight and be back in the contact with you tomorrow morning. Our intent is to still move forward with an outsourced service." However, in the end, Remington decided to use HSS instead of Jani-King because the quoted price was too high and Studer found out that what Jani-King did was to further subcontract to yet another local company.

On July 4, Vega had a meeting with a number of Remington employees and managed to obtain four signed authorization cards. The evidence shows that from July 5 to July 11, the Union obtained seven other signed authorization cards.

At some point before July 12, Holliday visited the hotel and on July 12, he submitted a contract proposal to Remington. Between July 12 and July 16, HSS and Remington by their respective agents, engaged in extensive negotiations regarding the subcontracting of the

housekeeping department. The major issues were that HSS was insistent that the wages and compensation currently paid by Remington were not high enough to attract suitable and sufficient employee applicants. And the other major issue was that HSS was insisting on and Remington was resisting, a provision whereby if the contract was terminated, Remington would not solicit any employees of HSS and would, as a remedy, pay to HSS, a substantial amount of money in the event that Remington hired HSS employees after a contract had been terminated.

On August 16, 2012, a contract was executed between Remington and HSS and the start date was scheduled for August 21. In essence, the agreement called for the transfer of Remington's housekeeping employees to HSS; a new and higher starting pay rate; a raise for already employed employees; and a penalty clause whereby Remington would pay a half year's wage for any HSS housekeeping employee that Remington hired in the event that the contract was terminated. The Housekeeping Director and two housekeeping supervisors would remain employed by Remington and HSS agreed to hire at least one new supervisor. [5]

On August 20, the employees of Remington were told that HSS was taking over the housekeeping functions and that if they wished to be hired by HSS, they should fill out applications. Most did so and most were hired. However, there were a few whose information was questioned by HSS's e-verify system and who did not get employed by HSS. [6] Those that were hired by HSS began on its payroll as of August 21, 2012. They also got substantial wage increases. Those hired after August 21, were paid at a higher rate than new hires were paid by Remington.

After the meeting was held on August 20, the Union filed its first representation petition on the same date. (Case No. 29-RC-87706). This petition sought to have an election amongst the housekeeping employees who were employed at the Hyatt hotel. Presumably this petition was received by the company on August 21. It later was withdrawn and replaced by another petition.

It should be noted that in addition to the sudden quest to contract out the housekeeping duties, it is conceded that Remington's cost for utilizing HSS to perform this function was higher than Remington's existing costs. [7] I also note that there was no issue about the quality of the

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[5] Except for one former employee of Remington, HSS agreed to hire all of Remington's employees who passed a drug screen, a background check and the company's e-verify system.

[6] Without going into too much detail, employers can voluntarily enroll in a Federal Government system called e-verify. Under this system, a company can, after obtaining certain documents from a new employee, (often social security cards), utilize this computer system to check to see, for example, if a new hire's social security number is a match to one on file with Social Security. If there is non-match, the newly hired employee is given a fixed period of time to contact the government agency and fix the problem. If it can't be fixed or explained (for example a non-match because of a name change), then the employee has to be fired.

[7] Some of the considerations cited in favor of contracting out the work set forth in Mengiste's June 28 memorandum, strike me as being somewhat bogus. For one thing, he cites the Supreme Court decision on health care, which would not go into effect for at least a year and would not really affect an employer that already was providing health insurance to its employees. In part, Mengiste claims that by contracting out the work, Remington would likely be able to lower costs because a contractor might be able to lower wage rates and because various of the existing employee costs, such as worker compensation insurance and health insurance, would be carried by HSS instead of Remington. But the people who run HSS have ample experience in hotel staffing and I don't see how Mengiste would be so naïve as to assume that HSS would negotiate a contract where it would take on those costs without setting a price to offset the costs and earn a profit. Indeed, as the negotiations got underway, it became obvious that hiring HSS to

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Remington housekeeping staff. It was acknowledged by Remington that the reason why the quality scores were not good was not because the employees were lazy or incompetent, but rather because Remington simply could not employ enough workers to get the job done right. Thus, Remington's management asserts that they thought that because HSS specialized in manpower recruitment, it would be in a better position to get sufficient staff for this hotel. But it seems that the problem was not so much HSS's recruitment skills as the amount of money that Remington was offering to work at this hotel. Indeed, HSS after having its contract for this hotel terminated back in December 2011, had no office in Long Island, had no staff for Long Island and had no contacts with the local labor market in that area. Moreover, if HSS had not been successful before December 2012, why would Remington assume that HSS would be more successful now?

Remington asserts that the main reason that it decided to contract out this work to HSS was because the customer service scores were and remained low. However, I note that although the Respondent put into evidence those scores over an extended period of time, there is no evidence showing how these scores compared to Hyatt's scores when it along with HSS ran the hotel and its housekeeping department before Remington took over. Moreover, and more significantly, there was no evidence of any communications between Remington, Hyatt or the hotel's owners indicating that either Hyatt or the owners were worried or had any concerns about the scores after Remington had taken over. Indeed, there is no evidence of any communications by Remington's management to either Hyatt or to the hotel's owners that Remington was concerned about the scores or that it was even contemplating any measures to improve the scores.

The General Counsel contends that the decision to subcontract out the work of the housekeeping employees was so that Remington could avoid being their employer and therefore avoid having to bargain with a union. Since this is alleged to be violative of Section 8(a)(3) of the Act, the legal standard would be the one set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F. 2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

In my opinion, the facts cited above, including the evidence that the decision to subcontract was undertaken shortly after management became aware of union activity at the hotel, strongly support a primae facie showing that the decision was motivated by anti-union considerations. *Best Plumbing Supply,* 310 NLRB 143, 144 (1993); *Flat Rate Moving Ltd*., 357 NLRB No. 112, slip opinion at page 8, (2011) affd. by 2nd Cir. on November 21, 2012; *Evenflow Transportation Inc*., 358 NLRB No. 82 (2012). As it is also my opinion that Remington has not met its burden of proof to show that it would have taken this action notwithstanding the employees' union activity, I also conclude that the Respondent has violated Section 8(a)(1)&(3) of the Act.

Having concluded that Remington illegally made a decision to contract out the housekeeping department to HSS, I conclude that given the chain of causation, Remington is legally responsible for what happens to those employees thereafter. Thus, the decision to contract out the housekeeping department resulted in the discharge of those employees from Remington's employment. Accordingly, to the extent that some of the employees were not hired by HSS, those particular employees, absent any other legal impediment, would be entitled to

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do the housekeeping work would substantially increase Remington's costs and not reduce them. In fact, it strikes me that the only rational way to justify this kind of cost increase, would be because Remington could off load not the costs, but the employees to someone else so that it could avoid being required to bargain with a union.

reinstatement and backpay from August 20, 2012 to such time as they receive an unconditional offer of reinstatement. As to those former Remington employees who were hired by HSS, they also would be entitled to reinstatement by Remington after their discharge by HSS on or before October 19, 2012. In these circumstances, their employment at HSS should be considered as interim employment for purposes of calculating backpay owed by Remington. Therefore, any Remington employees who were hired by HSS and who had their employment terminated for any reason other than gross misconduct would be entitled to backpay starting from the date of their termination to such time as they receive unconditional offers of reinstatement.

As noted above, HSS commenced operating at the hotel on August 21, 2012 and hired almost all of the housekeeping employees of Remington. Nevertheless, the housekeeping director, Bianca Dunleavy and the two housekeeping supervisors remained employees of Remington. Thus, although the regular employees were on the payroll of HSS, they continued to be supervised by Remington.

(c) Continued union organizing activity and the termination of the contract between Remington and HSS

By the time of the transfer, the Union had obtained a total of 25 signed authorization cards from employees. After August 21, 2012, the Union continued to solicit authorization cards during the months of August through November and obtained an additional 30 cards during that period of time. (Most were obtained in August and October). Thus, the transfer of the employees from Remington to HSS did not stop employees from seeking representation.

On September 11, 2012, the Union filed a new petition in Case No. 29-RC-89045 for a unit of about 40 housekeepers, housemen, maintenance and drivers. The Petition lists both Remington and HSS as the employers. This was amended on September 21, 2012 and amended again on October 16, 2012. The final amendment lists only Remington as the employer, (deleting HSS), and sought to have an election in a wall to wall unit consisting of 120 employees.

HSS continued to perform services at the hotel until October 19, 2012. In this regard, the record shows that this was HSS's only client in Long Island and that although it had attempted to interest Marriott in using its services for this area, those solicitations were unsuccessful and occurred before HSS entered into the contract with Remington.

The record shows that during August and September, there were a number of written communications between Remington and HSS whereby Remington complained about a number of issues including the level of staffing; the non-hiring by HSS of a supervisor; the mispayment of wages; and the lack of a trainer.

On September 19, 2012, Holliday sent a memorandum to Studer which stated:

> Per our contract, this letter serves as 30 days notice to terminate our agreement with Remington Hotels… effective October 19, 2012. As a courtesy, we waive section 9 of our services agreement and have no objection to Remington soliciting and hiring HSS employees currently employed at the property.

Holliday not only stated that HSS was going to terminate the contract, but that it would *not* enforce the penalty clause that would otherwise require Remington to pay the equivalent of six month's pay for each HSS employee that Remington decided to reemploy at the hotel.

Holliday explained that he waived section 9 because HSS had no other locations in the area, and therefore had nowhere to put these people anyway.

At some point before October 19, 2012, Remington went out and recruited an entirely new housekeeping staff and trained them at another hotel. Thus, when October 19 arrived, all of the housekeeping employees who worked at the hotel were told, (to surprise of the HSS management), that they were being fired and that they would not be hired back by Remington. In justification of this action, Remington witnesses testified that although HSS had waived the penalty clause, they couldn't be sure that HSS wouldn't try to have these employees work elsewhere and that Remington could not be sure if it would have an adequate staff available when it resumed control of the housekeeping operations. To me this is absurd. For one thing, HSS had no other place to put these people and in my opinion, Remington was aware that HSS had not been successful in soliciting other business in Long Island. For another thing, it would have been a simple matter to ask the employees, after HSS had given its termination notice, if they wished to be reemployed by Remington. It had a month to do so.

Based on the above, I am convinced that Remington chose not to hire the housekeeping employees because of their continued union activities and to avoid a possible adverse consequence resulting from the pending election petition. See *FES*, 331NLRB 9, supplemented at 333 NLRB 66 (2011) enfd. 301 F.3d 83 (3rd Cir. 2002) explicating the legal framework for deciding cases involving alleged discriminatory refusals to hire. I therefore conclude that by refusing to offer these employees their jobs back, Remington violated Section 8(a)(1) & (3) of the Act. [8] Also, as I have already concluded that the prior discharge of the housekeeping employees on August 20, was a violation of the Act, it is not necessary for me to determine whether Remington as a single employer with HSS, also violated that Act by discharging these employees on October 19. As they would be entitled to reinstatement and backpay either as a result of the illegal discharges on August 20 or the illegal refusals to hire on October 19, the remedy would be the same. [9]

(d) Other alleged 8(a)(1) violations.

Apart from what has already been described, the General Counsel presented a number of employee witnesses who testified to conversations with Osiris Arango, the hotel's local human resource director and with Percida Rosero. It is contended that these two persons violated Section 8(a)(1) of the Act either by engaging in coercive interrogations or by making threats of reprisal. As previously noted, Rosero did not testify so the testimony about what she said, stands uncontradicted. As to Arango, although she conceded that she did have similar conversations with these employees, she denied those aspects that are alleged to be unlawful. Because of the mutually corroborative nature of their testimony and also based on demeanor factors, I shall credit the General Counsel's witnesses.

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[8] I note among other things, that none of the witnesses called by Remington could testify as to who actually made the decision to not hire the housekeeping employees or when that decision was made. All asserted that they did not make the decision but were told of it shortly before October 19, 2012. Whoever the decision maker was, that person was not called as a witness by the Respondent.

[9] Because Remington retained supervisory control over the housekeeping employees after their transfer to HSS, I would also conclude that Remington and HSS were joint employers of these employees during the period from August 21 to October 19. See *International Transfer of Florida Inc*., 305 NLRB 150 (1991); *Laerco Transportation*, 269 NLRB 324 (1984) and *Capital EMI Music, Inc*., 311 NLRB 997, 1000 (1993) enf'd sub nom., 23 F.3d 399 (4th Cir. 1994).

According to Maritza Torres, on August 21, 2012, the day of the transfer to HSS, she asked Percida Rosero what was going on and Rosero said that this was happening because of the Union. She also testified that Rosero stated that other things were going to happen. I construe this as a threat of unspecified reprisals which is violative of Section 8(a)(1) of the Act.

Delia Berti Reyes Granados testified that in early August, (before the transfer of the housekeeping employees to HSS), Osiris Arango asked her if the two people from the Union had spoken to her. Granados states that she said no and Arango asked what benefits the union would give her. According to Granados, she responded that she didn't know. In my opinion, this constitutes coercive interrogation and is violative of Section 8(a)(1) of the Act.

Josefina Jurado Portillo testified that on or about August 28, she asked Arango about her health insurance and then after they went to the latter's office, she was asked "what do you know about the Union." In this respect, I conclude that this is unlawful interrogation within the meaning of Section 8(a)(1) of the Act.

Noris Gutierrez's testimony was that in late August or early September, 2012, Osiris Arango called her into her office and asked if she knew of anyone who was talking to the Union. When Gutierrez responded no, Arango said that the union was not good. In my opinion, this constitutes unlawful interrogation in violation of Section 8(a)(1) of the Act.

Estela Cabrera testified that on or about September 5, 2012, she had a conversation with Arango in her office and was asked if she knew anything about the Union. According to Cabrera, she told Arango that she didn't know anything about the union because she had been on vacation and that Arango said that the union was not good. Cabrera states that Arango reminded her that when the housekeepers went to work for HSS, their pay had been increased. Based on the credited testimony of Cabrera, I conclude that the Respondent coercively interrogated employees in violation of Section 8(a)(1) of the Act.

Ana Salgado testified that in mid September, 2012, she was asked by Percida Rosero if she was going to a meeting with the Union that the women were having. Salgado responded that she wasn't aware of such a meeting and Rosero said that HSS had found out that they were holding a meeting. As previously noted, Rosero was not called as a witness and I therefore conclude that these remarks constitute unlawful interrogation in violation of Section 8(a)(1) of the Act. [10]

Francis Lopez testified that in late September 2012, she had a conversation with Arango in the latter's office in which Arango asked if she knew what the union was. According to Lopez, when she said no, Arango explained that the Union was there to protect the employees but that it wasn't good because the employees had to pay them a lot of money. Lopez testified that Arango asked her what other employees were saying about the Union and asked her if she signed a union card. According to Lopez, Arango stated that if they found out, they would fire everybody. (In fact, as described above, less than a month later everybody was fired). Based on the credited testimony of Lopez, I conclude that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating an employee and threatening to discharge employees if they joined or supported the Union.

[10] This might also be construed as the Respondent giving employees the impression of surveillance, but that was not alleged in the Complaint.

Reina Trejo testified that in or about the middle of September 2012, she had a conversation with Arango when she was working on the sixth floor. She testified that while training a new employee, Arango came into the room, asked the other person to wait outside and after a brief discussion of employee benefits, asked if she would go with the Union or stay with the hotel. Trejo responded that if the Union gave her better benefits, then she would go with the Union and if the hotel gave her better benefits then she would go with the hotel. According to Trejo, Arango said that the Union was two faced and that it would take a percentage of what she earned. Although not earth shattering, I conclude that this also constituted unlawful interrogation in violation of Section 8(a)(1) of the Act.

In addition to the conversations that have been described above, the General Counsel alleges that three leaflets distributed by Remington to employees in January 2013, violated the Act. These are as follows:

Fact #2
Question:
Would the enforcement of work rules change if the Union is voted in?
Answer: YES! The rules would be applied and enforced more strictly. Right now, managers have a lot of flexibility and room to be fair. We believe in "extra chances" (except for very serious violations).
In a Union hotel, that would go away. The rules would have to be enforced *very* rigidly. That's just the way it is in 'union' companies – employers are *afraid* of "doing favors"; *afraid* of being flexible.
Why is that? Because "union" companies worry that when they give an otherwise good employee an "extra chance", the union will use it against them later on – by a grievance filing – when the same violation is committed by an employee who really does deserve to be fired.
This is a bad thing for good employees.

Fact # 5
Question:
Obviously, the Union will ask for higher wages, more benefits and less work. The Hotel will have to agree to this… right?
Answer:
Let's be realistic. Some things may go up. But, if that happens other things will go down.
Think about your "Real Wage Pie Chart." The Pie doesn't get bigger just because the Union wins the election. The Hotel can only pay what it can afford.
The Pie only gets bigger if…
More guests stay her, and
Spend more money.
Good guest service grows the Pie … Not the Union.

Fact # 6
Question:
What happens if no agreement is reached?
Answer:
Everything could stay the same: No increases at all! … It is not unusual for unions and employers to go years without reaching agreement.
Example: At Remington's hotel in Alaska –The Anchorage Sheraton – the Union has tried without success since February 2009 to get a new agreement. The employees

there haven't had an across-the board pay increase since February 2008 – *almost 5 years now*!

These pieces of propaganda are of a type that is fairly typical in union election campaigns. As to Fact # 5 and Fact # 6, I don't think that either constitutes a threat of reprisal or a threat that certain benefits would be withheld if the Union were to win an election. The statement that the hotel can only pay what it can afford, is simply a general truism and the statement as a whole, cannot, in my opinion, be reasonably understood by employees that by selecting a union, they would necessarily lose some of their existing benefits as a result of bargaining. Similarly the questions and answers in Fact # 6 are opinions as to how long bargaining could theoretically take during which, in the absence of an interim agreement, the status quo might be maintained. [11]

On the other hand, it is my opinion that the statements in Fact #2 do constitute a threat that if a union was selected and a contract reached, the company would more strictly enforce its existing disciplinary rules. As such, I conclude that in this respect, Remington violated Section 8(a)(1) of the Act. See *Olympic Supply, Inc. d/b/a Onsite News*, 359 NLRB No. 99 (2013).

(e) The discharge of Margaret Loiacono

The Complaint alleges that the Respondent discharged Loiacono on January 2, 2013 because Remington believed that she assisted the Union and engaged in concerted activities and to discourage employees from engaging in those activities. A problem here is that Loiacono did not join the Union or assist it in any other way and she did not, in my opinion, engage in what can be described as concerted activity within the meaning of Section 7 of the Act. The issue therefore is whether the evidence would support the contention that notwithstanding the above, the Respondent discharged this employee, (before her probationary period had ended), because it believed that she engaged in such activities. And if that is the case, then the General Counsel would prevail.

The Respondent, on the other hand, argues that because her job was as a lobby ambassador, she can't do her job, if she wasn't in the lobby. It asserts that she was absent from the lobby for about 10 to 15 minutes on Sunday morning, December 30, 2012. It contends that this is a prime checkout time for guests and that it is important for a luxury style hotel to have the lobby ambassador give the guests a positive feeling as their last experience of their stay.

Loiacono was hired in September 2012, when HSS was still operating the housekeeping department. She was hired mainly as a lobby ambassador and she also functioned, part of the time, as a PBX operator. As a lobby ambassador, her responsibilities were to greet guests, be

[11] I note that the reference in Fact # 6 to the situation at the Sheraton Anchorage, brings to mind that on April 24, 2013, the Board issued a Decision and Order in *Remington Lodging & Hospitality, LLC d/b/a Sheraton Anchorage*, 359 NLRB No. 95. In that case, the Board found that this Employer, represented by the same law firm, violated the Act by among things; (1) changing the employees' terms and conditions of employment after contract expiration without first providing at least 30 days' notice to Federal Mediation & Conciliation Service; (2) unilaterally implementing a new health benefit plan without first bargaining to impasse or agreement; (3) disciplining off-duty employees for presenting a petition to the Employer in the lobby; (4) discharging off-duty employees for distributing handbills under the hotel's porte cochere; (5) maintaining and/or enforcing certain employee handbook rules; (6) soliciting employees to sign a decertification petition; and (7) withdrawing recognition from the union.

of assistance to guests and to have a pleasant attitude when dealing with guests. She also, from time to time, (along with other employees), drove a company van to take guests to various locations.

In late December 2012, the Company, as a part of its prospective election campaign, distributed to each employee a pie chart setting forth each employee's compensation and how it was divided. Loiacono was invited into Arpino's office and he gave her the pie chart while saying that Remington was giving employees a certain amount of money and that they couldn't guarantee anything with a union. She states that she told him that he didn't have to explain because she had been a member of a New York State employee union. During this conversation, Arpino told her that her work had improved and that she was doing a good job. [12]

After receiving the pie chart, Loiacono discussed it with Yohenna Borrero, a housekeeping supervisor and said that the chart was incorrect as to Loiacono because it set forth an amount for uniforms and she didn't have a uniform. She asked Borrero if her chart was also incorrect and suggested that she check it over. Borrero said that she would. This probably occurred on December 30, 2012 and is likely the incident where the Respondent asserts that Loiacono was away from the lobby for 10 to 15 minutes.

On December 30, Loiacono asked to speak to Rostek and they went into his office. Loiacono said that there was a mistake in her pie chart because there was a section for a uniform allowance and she didn't have a uniform and didn't get a uniform allowance. She also pointed out that some of the pie charts for other employees might also have mistakes because although hers had a slice for health insurance, some employees did not take health insurance. She asked Rostek who made the pie charts and he said Osiris Arango. She suggested that they correct the charts and he said he would look into it and talk to Osiris.

Loiacono testified that later on December 30, Rostek held a conversation with her and two other employees in which he stated that it would take a long time to get a union contract and that there was no guarantees that we would get a raise. She also testified that Rostek said that even if they got a "contract and stuff," Remington wouldn't necessarily have to honor it. According to Loiacono, she responded that she was not for the Union or against it, but that she would probably be a non-union employee.

Rostek's version of the earlier conversation is not much different from Loiacono's. He states that she brought up the mistake in her pie chart and that he thanked her for pointing it out. According to Rostek, he felt that she was simply trying to be helpful.

I note that Loiacono's complaint about the pie chart, as described by her own testimony, was not really a complaint about her actual compensation. It was simply a complaint about how her compensation was incorrectly represented on her pie chart. Nor was she speaking on behalf of other employees about their actual wages and conditions of employment. She was pointing out to supervisor Borrero and General Manager, Rostek, a mistake in a pie chart that represented her own compensation and merely suggested, (without talking to any other employees), that the company may have made a mistake in the pie charts that it distributed to other employees.

[12] At an earlier point, she had been spoken to about her attitude and she had pledged to correct that aspect of her job.

In an e-mail dated Monday, December 31, 2012, Arpino relayed to Rostek a statement from Yohenna regarding the conversation she had with Loiacono about the pie chart. Arpino states that he was told by Yohenna that Loiacono asserted that since she didn't have a uniform, she should get paid the amount of money that was put in the chart for cleaning uniforms. His e-mail goes on to state:

> Marge then explained that she was calculating from her house all of the money since she started working here that she should get for the dry cleaning and it was over $200. Marge was then waiting for today (Monday) to speak with Jeff and see his face when she asked for that money. Marge then said that she is not stupid and that is not legal, putting things that they are not getting and lying to the people and that was against the law. And that she was waiting for Ken to talk to Jeff about it. Then she asked me if I send my clothes to the dry cleaner and I said "No". Then she said "then see they should pay you for that".

This e-mail finally relates that Loiacono told Yohenna Borrero that she was going to bring the hotel to court after January 14, regarding her pay rate.

Loiacono was discharged on January 2, 2013, shortly before her probationary period was about to end. The termination report written by Arpino states:

> On 12/30/12 at approximately 11:30 AM, Marge was outside of her work area ignoring her duties as Lobby Ambassador as she was not engaged in work activities while in the Housekeeping office with Yohenna. Additionally, Marge has been spoken to in the past regarding displaying an attitude that does not meet the hotel's standards for hospitality and attitude.
>
> * * *
>
> Our service scores continue to be some of the worst in Hyatt and Remington. During the time Marge was not performing Lobby Ambassador duties, numerous guests would have passed the lobby and not been offered assistance and service which is a Remington standard for Lobby Ambassadors and a key component of our service culture. On or about December 11th, Marge approached the General Manager to complain about the Van light being on and how this had been unrepaired for approximately four months; Jeff asked her if she had addressed this with the FO manager, Marge said no but that everyone was aware of this issue; Jeff asked Marge how did she know about this issue if she had joined us about three months prior, Marge responded that everyone knew about it but it was not repaired. A few weeks ago I, Andrew Arpino and Jeff Rostek, General manager had a conversation with Marge in regards to her responsibilities and attitude and how important her disposition was to impact the overall service scores, at this time no improvement has been observed.

What is peculiar here is that Arpino's e-mail message regarding Lioacono's conversation with Yohenna Borrero is different from how Loiacono described this conversation in her own testimony. (Borrero did not testify). And unlike Loiacono's rather bland description, the version reported to Rostek on December 31 is far more emphatic and colorful; even going so far as to relate a threat by Loiacono to sue the company.

As of December 2012, the election petition was still pending before the Board's Regional office. And the pie charts that were distributed to the employees were part and parcel of the Respondent's campaign to convince employees to vote against the Union. In these circumstances, it seems to me that the Respondent's view of Loiacono's reported extravagant

reaction to the pie charts could likely have led management to view her as a potential thorn in the side when it came to other campaign literature that it intended to issue as an election drew nearer. (As noted, Loiacono had told Rostek that she had been a member or a New York State employee union).

Even though Loiacono did not join or support the Union or engage in concerted activity with other employees, I cannot escape the conclusion that it is more probable than not, that the Respondent's management viewed her as a potential obstacle in relation to their own election campaign propaganda. Accordingly, I conclude that by discharging Loiacono, the Respondent violated Section 8(a)(1) of the Act.

On these findings of fact and on the entire record, I issue the following conclusions and recommended [13]

Conclusions of Law

1. By contracting out the work of the housekeeping department and thereby discharging the employees in that department on August 20, 2012, because of their membership in or activities on behalf of Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades, or because of their protected concerted activities, Remington violated Section 8(a)(1) and (3) of the Act.

2. By refusing to offer employment to the employees of HSS who were employed in the housekeeping department on October 19, 2012 because of their union or protected concerted activities, Remington has violated Section 8(a)(1) and (3) of the act.

3. By discharging Marge Loiacono because it believed that she would impede the Respondent's electioneering campaign, the Respondent violated Section 8(a)(1) of the Act.

4. By interrogating employees about their activities in relation to the Union, the Respondent has violated Section 8(a)(1) of the Act.

5. By notifying employees that it would more strictly enforce work place rules if the Union was selected as their bargaining representative, the Respondent violated Section 8(a)(1) of the Act.

6. By threatening employees with discharge and other reprisals if they joined or selected the Union, the Respondent violated Section 8(a)(1) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged its housekeeping employees on August 20, 2012 and having illegally refused to hire the housekeeping employees working at the

[13] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Hyatt hotel in Hauppauge, Long Island on October 19, 2012, it must offer them reinstatement and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F.W. Woolworth Co., 90 NLRB 289 (1950),* with interest at the rate prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010), enf'd denied on other grounds sub. nom., *Jackson Hospital Corp. v. NLRB,* 647 F. 3d 1137 (D.C. Cir. 2011). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges and to notify the employees in writing that this has been done and that the unlawful discharges will not be used against them in any way. The Respondent shall file a report with the Social Security Administration allocating backpay to the appropriate calendar quarters. Respondent shall also compensate employees for the adverse tax consequences, if any, of receiving one or more lump-sum backpay awards covering periods longer than 1 year. *Latino Express, Inc.,* 359 NLRB No. 44 (2012).

Finally, because of the extensive nature of the unfair labor practices found to have been committed herein and because of the findings in the previously cited case involving the same employer, it is recommended that a broad order be issued.

ORDER

The Respondent, Remington Lodging & Hospitality, LLC., its officers, agents and assigns, shall

1. Cease and desist from

(a) Contracting out work and/or discharging employees because of its employees' actual or perceived membership or activities on behalf of Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades, or because of any other protected concerted activities for mutual aid and protection.

(b) Refusing to offer employment to individuals because of their union or protected concerted activities.

(c) Interrogating employees about their union or protected concerted activities.

(d) Telling employees that it would more strictly enforce work place rules if a Union is selected as their bargaining representative.

(e) Threatening employees with discharge or other reprisals, if the employees choose to be represented by a union.

(f) In any other manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer the housekeeping employees employed at the Hyatt hotel in Hauppauge, New York, as of August 20, 2012, full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Within 14 days from the date of this Order, offer employment to the housekeeping employees employed at the Hyatt hotel in Hauppauge, New York, as of October 19, 2012, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. [14]

(c) Within 14 days from the date of this Order, offer Marge Loiacono full reinstatement to her former job, or if that job no longer exist, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(d) Make the above described employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the Remedy section of this Decision

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful actions against those employees who have been found to have been illegally discharged, and within three days thereafter, notify them in writing, that this has been done and that the discharges will not be used against them in any way.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at the Hyatt Hotel in Hauppauge New York, copies of the attached notice marked "Appendix" [15] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 20, 2012.

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[14] The fact that Remington hired other employees before and after October 19, 2012 for the housekeeping department at the hotel should not be construed as meaning that those jobs no longer exist for purposes of this Order. The Respondent has the choice of replacing those employees with the discriminated employees or retaining the services of both sets of people.

[15] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 15, 2013

_____
Raymond P. Green
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or refuse to hire employees because of their membership or activities in Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades or to discourage employees from engaging in union or protected concerted activity.

WE WILL NOT refuse to hire employees because of their union or protected concerted activities.

WE WILL NOT interrogate employees about their union or protected concerted activities.

WE WILL NOT tell employees that we would more strictly enforce work place rules if a union is selected as their bargaining representative.

WE WILL NOT threaten employees with discharge or other reprisals, if they choose to be represented by a union.

WE WILL NOT in any other manner interfere with, restrain or coerce employees in the rights guaranteed to them by Section 7 of the Act.

WE WILL offer the housekeeping employees employed at the Hyatt hotel in Hauppauge, New York, as of August 20, 2012, full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL offer the housekeeping employees employed at the Hyatt Hotel in Hauppauge, New York as of October 19, 2012, employment to housekeeping jobs or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL offer Marge Loiacono full reinstatement to her former job, or if that job no longer exist, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make the above described employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them.

WE WILL remove from our files any reference to the unlawful discharges and notify those employees, in writing, that this has been done and that those actions will not be used against them in any way.

REMINGTON LODGING & HOSPITALITY, LLC.
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two MetroTech Center
Jay Street and Myrtle Avenue
Brooklyn, NY 11201-4201
718-330-2862. Hours: 9 a.m. to 5:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.